

No. 9/5/84-6Lab/3566.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Laldee Private Limited, Plot No. II, 20 Mile Stone, Mathura Road, Ballabgarh (Faridabad).

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 222/1982

between

SHRI MOHINDER SINGH WORKMAN AND M/S LALDEE PRIVATE LIMITED, PLOT
NO. II, 20 MILES STONE, MATHURA ROAD, BALLABGARH (FARIDABAD)

Present—

Shri Roshan Lal Sharma and Shri G.R. Arya representative of the management.

Shri R.C. Sharma, representative for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Shri Mohinder Singh workman and M/s Laldee Private Limited, Plant II, 20 Miles stone, Mathura Road, Ballabgarh, Faridabad, to this Tribunal,—*vide* Order No. JD/FD/53/82/27019, dated 14th June, 1982, for adjudication:—

Whether the termination of service of Shri Mohinder Singh was justified and in order?

If not, to what relief is he entitled?

2. Claim statement was filed by the workman on 24th July, 1982 in which it was alleged that he was employed by the management and his services were terminated without giving any notice, nor any charge-sheet was framed or nor any enquiry was held against him. It was further alleged that the termination of his services was illegal and against the principles of natural justice. It is, therefore, prayed that he may be reinstated with full back wages.

3. The management in their written statement dated 31st August, 1982 pleaded that the claimant was working as Foreman Incharge and was doing mainly supervisory work and was getting Rs. 1800 per month at the relevant time and he was not covered by the definition of "workman". It was further pleaded by the management that the claimant was working in Plant No. 2, Mathura Road, and was transferred to plant No. 1, but instead of reporting at plant No. 1, he remained absent from his duties and thus committed a serious act of misconduct and disobeyed the orders of the management. It was also pleaded that Plant No. 2 was not practically working and, therefore, the services of many workers were terminated and remaining employees and officers were ordered to be transferred to Plant No. 1. It is, therefore, prayed that the claim be rejected.

4. The claimant in his rejoinder dated 8th September, 1982 reiterated the plea taken in claim petition and further averred that he was a Dye-maker on permanent basis since 1980.

5. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the claimant is a workman under Section 2 (s) of the Industrial Disputes Act, 1947? (OPW)
- (2) Whether the management terminated the services of the claimant on 18th April 1982? (OPM)
- (3) Whether the termination of service of Shri Mohinder Singh was justified and in order?
If not, to what relief is he entitled? (OPM)

Shri Mohinder Singh claimant appeared as WW1. The management examined Shri Sushil Kumar, Director as MW-1, and produced the documents Ex. M-1 to M-51. After going through the entire evidence and hearing both the sides, my findings on the above issues are as under:—

Issue No. 1:

6. Shri Mohinder Singh stated that he used to work as Dye-maker and that he never worked as Forman. He further stated that no appointment letter was given to him and that he was working for the last 2 years. He then stated that he did not affix his signatures as Foreman but on the other hand he was an illiterate person and could sign only. MW-1 Shri Sushil Kumar, Director of the Management, stated that Shri Mohinder Singh was employed in Plant No. 2 and that 25—30 workers were under him and he was incharge of those workmen and used to sign their leave applications. The applications Ex. M-2 to M-51 have been proved by him and stated that these applications bore the signatures of Shri Mohinder Singh. He further stated that he identified the signatures of Shri Mohinder Singh on the office order Ex. M-1.

7. There is no dispute that Shri Mohinder Singh was getting Rs. 1,800 per month as wages because in the demand notice dated 22nd March, 1982, it is clearly mentioned that Shri Mohinder Singh was getting R. 1,800 per month as wages. In the written statement, the management has also

taken the plea that the wage of Shri Mohinder Singh was Rs. 1,800 per month. The question that arises for determination is whether Shri Mohinder Singh was "workman" or not? Section 2 (s) of the Industrial Disputes Act, 1947 defines the "workman" as under:—

"Workman" means any person (including any apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not includ any such person:—

- (i) who is subject to the Army Act, 1950 (46 of 1950), or Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

According to this definition, if any person is employed in supervisory capacity and draws wages exceeding Rs. 500 per mensem, he is not covered by the definition of the "workman". In the present case, the claimant has clearly stated that he was working as a Dye-maker. In the demand notice, he described himself as Dye-maker. In the Witness Box, he clearly stated that he was employed as Dye-maker and he never worked as Foreman. Even MW—1 Shri Sushil Kumar, Director of the Management did not specifically state that Shri Mohinder Singh was employed as Foreman. In cross-examination, he stated that he did not know if any appointment letter was given to Shri Mohinder Singh or not because the Managing Director used to deal with that matter. The Managing Director has not appeared in the witness box, nor the copy of the appointment letter has been produced by the management to show that Shri Mohinder Singh was appointed as Foreman. Shri Mohinder Singh specifically stated that no letter of appointment was given to him. He further stated that he was an illiterate person, but could affix his signature only. Consequently, the management has not produced the appointment letter to show that Shri Mohinder Singh was employed as Foreman. In the office order Copy Ex. M-1, it is mentioned that the services of Shri Mohinder Singh Foreman Plant No. 2 were transferred to Plant No. 1. This order does not help the management because the appointment letter has not been produced to show that Shri Mohinder Singh was appointed as Foreman. The attendance register has not been produced by the management to show that Shri Mohinder Singh marked his presence as Foreman. The extract from the wages register has not been produced by the management to show that Shri Mohinder Singh was being paid wages as Foreman. The entire record was in possession of the management which had not been produced by them to prove that Shri Mohinder Singh was ever appointed as a Foreman. The leave applications Ex. M-2 to M-51 only show that Shri Mohinder Singh used to sign the same. Merely because he was receiving the applications is no ground to hold that Shri Mohinder Singh was employed in a supervisory capacity. Moreover no documentary evidence had been produced by the management that Shri Mohinder Singh possessed any diploma from any recognised Institute so as to perform the job of a Foreman. The claimant has described himself as a Dye-maker. Under all the circumstances, it is held that Shri Mohinder Singh claimant is a "workman" and there is no cogent evidence on the file from the management side to show that he was ever appointed as a Foreman. The issue is decided accordingly in favour of the claimant.

Issues No. 2 and 3:

8. Both these issues are interlinked and can thus be decided together conveniently. No copy of the order terminating the services of Shri Mohinder Singh has been placed on file by the management. In the written statement, it was pleaded that the claimant remained absent from duty because he did not report at Plant No. 1 and had thus committed a serious act of misconduct. No chargesheet was served on the claimant nor any enquiry officer was appointed to hold the enquiry against the alleged misconduct. As already mentioned above the copy of order terminating the services of the claimant has not been produced. Under these circumstances, the termination of services of Shri Mohinder Singh was not justified and in order. Both these issues are decided accordingly. Consequently Shri Mohinder Singh is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated, the 12th May, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 334, dated 16th May, 1984.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.